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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,245

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Eric Kolodziejczyk

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EXAMINER

KAROL, JODY LYNN

ART UNIT

PAPER NUMBER

1617

NOTIFICATION DATE

DELIVERY MODE

09/29/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No.	Applicant(s)	
	10/529,245	KOLODZIEJCZYK ET AL.	
	Examiner	Art Unit	
	Jody L. Karol	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 7-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/15/2006 and 7/21/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to the Response to Election/Restriction Filed on 8/1/2008. Claims 1-20 are pending.

Election/Restrictions

1. Applicant's election without traverse of Group I claims 1-6 directed to a product wherein an interface of said product comprising a complex formed instantaneously at the interface by the mixture of at least one protein and at least one polysaccharide, and the species election without traverse of whey protein and acacia gum as the complex forming agents, in the reply filed on 8/1/2008 is acknowledged.

Claims 7-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Accordingly, claims 1-6 are examined on the merits herein and prior art is applied to the claims in so much as it reads on the elected species.

Priority

2. This Application is a 371 of PCT/EP03/10740 International Filing Date: 9/26/2003, which claims priority to Application No. 02021653.7 filed with the EPO on 9/27/2002.

Information Disclosure Statement

3. The information disclosure statements (IDS) filed on 6/15/2006 and 7/21/2006 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements have been considered.

Specification

4. The abstract of the disclosure is objected to because of the legal phraseology "said product, and the recitation of "the present invention concerns" which can be implied. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by İbanoğlu, E. ("Rheological Behavior of Whey Protein Stabilized Emulsions in the Presence of Gum Arabic," *J. of Food Engineering*, Vol. 52, May 2002, pgs. 273-277).

İbanoğlu teaches whey protein isolate-stabilized emulsions additionally comprising gum arabic (acacia gum) as a stability enhancer (see abstract and page 273). İbanoğlu explicitly teaches an oil-in-water emulsion comprising 1% by weight whey protein isolate and 2.5% by weight gum arabic (see page 274, section 2.2). This gives 3.5% by weight protein and polysaccharide as claimed in the instant claim 1, and a protein to polysaccharide ratio of 1:2.5, as claimed in the instant claim 6.

7. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Prakash et al. ("The Effects of Added Proteins on the Functionality of Gum Arabic in Soft Drink Emulsion Systems," *Food Hydrocolloids*, Vol. 4, No. 3, 1990, pgs. 185-195).

Prakash et al. teach adding whey protein to increase the functionality of gum arabic (acacia gum) as an emulsifier and stabilizer in soft drink emulsions (see abstract and page 177). The emulsions taught by Prakash et al. are prepared using a stock solution of 240 mg of gum arabic in 1.0 mL of water and 0.2 mL of soybean oil, diluted to a final dilution of 1:1000 (see page 178, Emulsion activity index (EAI)). This gives approximately 0.2 mg of gum arabic/mL of emulsion. Prakash et al. further teach adding whey protein to the gum arabic sample solution at 0.002 g/mL of emulsion and

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0.004 g/mL of emulsion (see page 179-180, Results, Tables I-II, and Figure 1). This gives a ratio of protein to polysaccharide of 20:1 or 10:1 for the 0.004 g/mL and 0.002 g/mL of whey protein respectively. Furthermore, the total weight percentage of whey protein and gum arabic can be estimated using the density of the soft drink emulsion and will fall within 0.01 to 5% weight as claimed in the instant claim for all reasonable densities of a soft drink emulsion. For example, the density would have to be greater than about 42 g/mL for the weight percentage of whey protein and gum arabic to drop below 0.01%, and lower than about 0.09 g/ml for the weight percentage to be higher than 5%.

Conclusion

No claims are allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jody L. Karol whose telephone number is (571)270-3283. The examiner can normally be reached on 8:30 am - 5:00 pm Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

JLK

/San-ming Hui/
Primary Examiner, Art Unit 1617